

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Jaleel Tray Twon Miller,)	
)	
Plaintiff,)	C/A No. 4:21-cv-00467-MBS-TER
)	
v.)	
)	ORDER
Reginald Keith Gadson, SCDC Correctional Officer, and Nurse Shayla L. Evans,)	
)	
)	
Defendants.)	
)	

Plaintiff Jaleel Tray Twon Miller is proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983 asserting a violation of his Eighth Amendment rights stemming from an incident that occurred while he was incarcerated at Lieber Correctional Institution. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III, for pretrial handling. This matter is now before the court for review of the Magistrate Judge's Report and Recommendation.

On May 28, 2021, Plaintiff filed a motion seeking default judgment pursuant to Federal Rule of Civil Procedure 55 on the basis that Defendants had failed to timely answer the complaint. ECF No. 29. Defendants filed a response in opposition on June 1, 2021. ECF No. 30.

On August 10, 2021, the Magistrate Judge issued a Report and Recommendation recommending that the court treat the motion as one for entry of default and deny it. ECF No. 41. The Magistrate Judge explained that upon being served, Defendants had moved for and received an extension of time until May 21, 2021 to file their respective answers. Defendants

then moved for and received a second extension of time until June 4, 2021 to file their answers. The docket reflects that Defendants filed a joint answer on May 28, 2021. *See* ECF No. 24. The Magistrate Judge observed that Plaintiff filed the motion for default judgment the same day, May 28, 2021, and that Plaintiff may not have received a copy of Defendants' answer prior to submitting the motion. The Magistrate Judge concluded that "because Defendants requested and were granted two extensions of time to file an answer, and timely filed the answer within the deadline, an entry of default is not appropriate." ECF No. 41 at 2. Pursuant to *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005), the Magistrate Judge advised Plaintiff of his right to file an objection to the Report and Recommendation. ECF No. 41-1. No party filed an objection and the deadline for doing so has expired.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight and the responsibility for making a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court reviews de novo only those portions of a magistrate judge's report and recommendation to which specific objections are filed and reviews those portions which are not objected to—including those portions to which only "general and conclusory" objections have been made—for clear error. *Diamond*, 416 F. 3d at 315; *Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Opriano v. Johnson*, 687 F.2d 44, 77 (4th Cir. 1982). The court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The court has reviewed the record and concurs in the Magistrate Judge's recommendation. The Report and Recommendation, ECF No. 41, is incorporated herein by reference. The motion for default judgment, ECF No. 29, is denied and the matter is recommitted to the Magistrate Judge for pretrial management.

IT IS SO ORDERED.

/s/Margaret B. Seymour
Margaret B. Seymour
Senior United States District Judge

October 4, 2021
Columbia, South Carolina